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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of Joo H. Chung, Michael Sun, Kenneth Gould, and Frank Huang
Serial No.: 09/752,744 Group Art Unit: 2661
Filed: 12/29/2000 Examiner:

For: **System and Method for Multicast Stream Failover**

TRANSMITTAL LETTER

Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

Enclosed please find the following:

1. Renewed Petition Under 37 C.F.R. §1.137(b) and 37 C.F.R. §1.47;
2. Copy of Decision Letter
3. Corrected Declaration and Power of Attorney document
4. Declaration of Counsel under
5. Check of \$130.00 for Petition fee

The Commissioner is hereby authorized to charge any fee deficiency, or credit any overpayment, to Deposit Account No. 18-1579. The Commissioner is also authorized to charge Deposit Account No. 18-1579 for any future fees connected in any way to this application.

Respectfully submitted,

Jon L. Roberts, Esq.
Registration No. 31,293
Roberts Abokhair & Mardula, LLC
11800 Sunrise Valley Drive
Suite 1000
Reston, VA 20191
(703) 391-2900

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OFFICE OF PETITIONS

March 5, 2003

Atty. Docket No. 2585-001



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov

Paper No. 14

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RESTON, VA 20191-5302

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OFFICE OF PETITIONS

In re Application of
Kenneth Gould, Joo Chung,
Michael Sun and Frank Huang
Application No. 09/752,744
Filed: December 29, 2000
Attorney Docket No. 2585-007
Title: System and Method for
Multicast Stream Failure



DECISION ON PETITION

This is a decision on the second renewed petition filed December 17, 2002, under 37 CFR 1.137(b), to revive the above-identified application; and responds to the new declaration under 37 CFR 1.47(a), filed therewith.

The petition under 1.47 is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b) and 1.47."

A decision on the petition under 1.137(b) is being held in abeyance pending satisfaction of the requirements under 1.47.

The above-identified application became abandoned for failure to reply to the Notice to File Missing Parts of Application mailed February 15, 2001. The Notice set a period for reply of two (2) months from the mail date of the Notice, with extensions of time obtainable under 37 CFR 1.136(a). No reply having been timely received and no extensions of time obtained, the above-identified application became abandoned on April 16, 2001. The initial petition filed June 10, 2002, was dismissed for failure to submit the required reply to the Notice to File Missing Parts of Application¹. The reply filed on petition did not include an acceptable declaration, the late surcharge or new drawings.

¹ A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by (1) the reply required to the outstanding Office action or notice, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to 37 CFR 1.137(d).

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On first renewed petition, filed November 14, 2002, petitioner authorized payment of the late surcharge and submitted a new declaration executed by joint inventor Gould on behalf of himself and on behalf of non-signing inventors Chung, Sun and Huang. However, the petition was dismissed because the declaration did not comply with 35 U.S.C. 115² and the petition did not include substitute drawings. Petitioner was specifically advised that the statutory requirement could not be waived, and that a new executed declaration in compliance with § 1.47 properly setting forth each of the inventor's citizenship was required (or a declaration executed by all of the inventors properly setting forth each of the inventor's citizenship) (Decision mailed December 9, 2002).

On instant request for reconsideration, petitioner submitted a new declaration and substitute drawings. The drawings are sufficient for purposes of satisfying the required reply component of § 1.137(b)(1) and reviving the application. However, the declaration is still not acceptable. The declaration submitted only includes the citizenship of signing inventor Gould. The citizenship of all inventors is required, regardless of their signing status.

Any renewed petition to be granted must include an acceptable declaration.


Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Office of Petitions
ATTN: NANCY JOHNSON

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza Four, Suite 3C23
Arlington, VA

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0309.



Nancy Johnson
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

² The applicant shall make oath that he believes himself to be the original and first inventor of the process, machine, manufacture, or composition of matter, or improvement thereof, for which he solicits a patent; and shall state of what country he is a citizen.

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